

2410.01 Freedom of Information Act (FOIA).

Issued January 1, 1994

SUBJECT: Freedom of Information Act (FOIA).

APPLICATION: Executive Branch Departments and Sub-units.

PURPOSE: To ensure consistent application of the requirements of the Act.

CONTACT AGENCY: Respective agency's designated FOIA Officer(s) and/or the Department of the Attorney General (AG) - Opinion & Public Information Unit.

TELEPHONE: 517/373-4798 (AG)

FAX: 517/335-4213

SUMMARY: The FOIA deals with requests from any person for "public documents."
With few exceptions, any public record is available for viewing or copying by any person who requests the document with sufficient specificity that the document can be identified.

In general, all requests for documents (whether written or oral) must be responded to within 5 business days following the date the request is received. Under specified circumstances, a 10 day extension may be obtained.

Failure to respond constitutes a denial. Denials give the requestor the right to go to court to obtain the documents.

APPLICABLE FORMS: Vary with the department.

PROCEDURES:

Requestor:

- May ask for a public record, or records, in writing or orally.
- Must describe the public record sufficiently to enable the receiving public body to find the requested record.
- Has a right to inspect, copy or receive copies of public records regarding a public body.
- Has a right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. Subscriptions are valid for up to 6 months and may be renewed.
 - If denied access to a public record, may begin an action in the circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located, to compel disclosure of the public record.
- If the original request was made orally, must confirm the oral request in writing not less than 5 days prior to commencing the action in circuit court.
- If successful, may be awarded reasonable attorney's fees, costs and disbursements, which shall be assessed against the public body that issued the denial.
- If successful, and the court finds that the public body has arbitrarily and capriciously violated the Act by refusal or delay in disclosing or providing copies of a public record, may be awarded punitive damages in the amount of \$500, which shall be assessed against the public body pursuant to whose public function the public record was kept or maintained.

Agency:

- Must designate, in writing, the person responsible for approving a denial of a request for a public record, if the responsible person is other than the chief administrative officer of the Executive Department or Sub-unit.
- Must respond to oral or written requests within 5 business days from the date of receipt of the request.
 - If the requestor agrees in writing prior to the expiration of the 5 business days, the response may be provided later than the 5 day period mentioned above, in accordance with the time frames set forth in the written agreement (see Sample Letter 1).
 - Under unusual circumstances, may issue only 1 time per request, a notice extending the date for response for not more than 15 business days after the date of receipt of the request. The notice must contain the reason for the delay and a date by which the response will be provided (See Sample Letter 1).
 - -- An "unusual circumstance" is either or a combination of the following where necessary to process a request:
 - the need to search for, collect or appropriately examine a voluminous amount of separate and distinct records as the result of a single request; or
 - the need to obtain records from numerous field offices, facilities or other establishment which are located apart from the office receiving or processing the request.
 - A response means:
 - Granting the request in person or in writing (See Sample Letter 2);
 - A written notice denying the request (See Sample Letter 3); or
 - A written notice granting the request in part and denying the request in part (See Sample Letter 4).
- Failure to respond within the statutory deadlines constitutes a denial.
- In responding to a request, do the following:
 - Determine if the record is exempt.
 - If yes, or unknown, contact the designated FOIA officer for a final determination and processing of the denial.
 - If no:
 - Determine if the document is readily available.
 - If yes, offer the records to the requestor for review and note taking. If this is not acceptable to the requestor, make copies in accordance with the payment procedures described on page 4-5 below.
 - If no, to provide time to get the materials, negotiate an extension with the requestor or send a 10 day extension letter.

If the request is denied:

- - The written notice of denial constitutes a final determination by the public body.
 - The written notice must contain (see Sample Letters 3 and 4):
 - An explanation of the basis for the determination that the public record or a portion of the public record is exempt from disclosure, or an explanation of the basis for the denial;
 - A certificate that the public record does not exist under the name given by the requestor, or by another name reasonably known to the public body;
 - A description of the public record, or information on a public record which is separated or deleted, if a separation or deletion is made.
 - A full explanation of the requestor's right to judicial review, including notification of the right to receive attorney's fees and damages.
 - The signature of the chief administrative officer, or a designee of the chief administrative officer, of the public body.
- Must provide a certified copy of a public record, if the requestor asks for such certification.
- Must furnish the requestor with:

- A reasonable opportunity to inspect and examine its public records.
- Reasonable facilities for making memoranda or abstracts from its public records during usual business hours.
- May make reasonable rules necessary to protect its records and prevent excessive and unreasonable interference with the discharge of its functions.
- Except as discussed below:
 - Is not required to compile, summarize or report information.
 - Is not required to create a new public record.
 - Is not required to produce edited copies of an already existing public record.
- Must use the most economical means available to provide copies of public records.
- Must separate exempt from non-exempt material and make the non-exempt material available.
 - When designing a public record, the public body, to the extent practicable, is to facilitate the separation of exempt and non-exempt materials.
 - If the separation is not readily apparent to a requestor, the public body is to generally describe the exempted material, unless that description would reveal the contents of the exempt information.
- Must establish and publish procedures and guidelines to implement Section 4 of the Act, concerning the charging of fees.

May charge a fee for providing a copy of a public record.

- Except as may be provided in another Act, the fee can be no more than the:
 - Actual mailing costs; and
 - Actual incremental cost of duplication or publication, including labor, calculated using the hourly wage of the lowest paid, full-time, permanent clerical employee; and
 - Cost of search, examination, review, deletion and separation of exempt from non-exempt information, calculated using the hourly wage of the lowest paid, full-time, permanent clerical employee.
 - Fees are not to be charged for the cost of examination, review, deletion and separation of exempt from non-exempt information, unless failure to charge a fee would result in unreasonably high costs to the public body, and the public body identifies the nature of the unreasonably high costs.
 - Fees may be waived or reduced if the public body determines that a waiver or reduction is in the public interest.
 - If a requestor files an affidavit stating that he/she is a recipient of public assistance, or stating facts showing an inability to pay the cost due to indigence, the public body must waive the first \$20 of the fee for each request.
 - A good faith deposit from the requestor, of not more than 1/2 of the total expected fee may be requested by the receiving agency if the anticipated amount exceeds \$50.
- FOIA fees are not to be charged for public records prepared under an act or statute specifically authorizing the sale of those records to the public.
- Must designate a person to accept the fees paid, and provide that information to the requestor.
- Must develop a method to communicate payment of fees to the person responsible for handling the FOIA response, particularly in those cases where a deposit is required prior to copies being made of requested material.
- Must publish and make available to the public the following:
 - Final orders or decisions in contested cases, and the records on which they were made.
 - Promulgated rules.
 - Other written statements which implement or interpret laws, rules or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted and used by the agency in the discharge of its functions.
 - Publications in pamphlet, loose-leaf or other appropriate form in printed, mimeographed or other written matter.
- The following public records may be exempt from disclosure under this Act; however, other statutes may prohibit the release of these records:

- Information of a personal nature, where public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - Interfere with law enforcement proceedings.
 - Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - Constitute an unwarranted invasion of personal privacy.
 - Disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - Disclose law enforcement investigative techniques or procedures.
 - Endanger the life or physical safety of law enforcement personnel.
- A public record which, if disclosed, would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure outweighs the public interest in non-disclosure.
- Records or information specifically described and exempted from disclosure by statute.
- Information, the release of which would prevent the public body from complying with 20 U.S.C. § 1232g. (This section deals with access to education records maintained by an educational agency or institution which receives federal funds.)
- A public record or information which is furnished by the public body originally compiling, preparing or receiving the record or information to or from a public officer or public body, in connection with the performance of the duties of the public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy, if:
 - The information is submitted upon a promise of confidentiality by the public body.
 - The promise of confidentiality is authorized by the chief administrative officer of the public body at the time the promise is made.
 - A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person on request.
 - This exemption does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license or other benefit.
 - Information or records subject to attorney-client privilege.
 - Information or records subject to the physician-patient, psychologist-patient, minister, priest or Christian science practitioner, or other privilege recognized by statute or court rule.
 - A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals or, if a public opening is not to be conducted, until the time for receipt of bids or proposals has expired.
 - Appraisals of real property to be acquired by the public body, until:
 - An agreement is entered into; or
 - Three years have elapsed since the making of the appraisal, unless related litigation has not yet ended.
 - Test questions and answers, scoring keys and other examination or data used to administer a license, public employment or academic examination, unless the public interest in disclosure outweighs the public interest in non-disclosure.
 - Medical, counseling, or psychological facts or evaluations concerning an individual, if the individual's identity would be revealed by disclosure of those facts or evaluations.
 - Communications and notes within a public body, or between public bodies, of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to final agency determination of policy or action.

- This exemption does not apply unless the public body shows that the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure.
- This exemption does not constitute an exemption under State law, or for purposes of § 8(h) of Public Act 267 of 1976.
- Records of law enforcement communication codes, or plans for deployment of law enforcement personnel which, if disclosed, would prejudice a public body's ability to protect the public safety, unless the public interest in disclosure outweighs the public interest in non-disclosure in the particular instance.
- Information which would reveal the exact location of archeological sites.
 - The Secretary of State may promulgate rules to provide for disclosure of the location of archeological sites for, purposes relating to preservation or scientific examination of sites.
- Testing data developed by a public body in determining whether a bidder's products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications.
 - This section does not apply if more than 1 year has passed from the time the public body has completed the testing.
- Public records of a police agency or department, if the release would do any of the following, unless the public interest in disclosure outweighs the public interest in non-disclosure:
 - Identify or provide a means of identifying an informer.
 - Identify or provide a means of identifying a law enforcement undercover officer, or an agent or a plain clothes officer, as a law enforcement officer or agent.
 - Disclose the personal addresses or telephone numbers of family members, relatives, children or parents of law enforcement officers or agents.
 - Disclose operational instructions for law enforcement officers or agents.
 - Reveal the contents of staff manuals provided for law enforcement officers or agents.
 - Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or others who furnish information to law enforcement departments or agencies.
 - Identify, or provide a means of identifying, a person as a law enforcement officer, agent or informer.
 - Disclose personnel records of law enforcement agencies.
 - Identify, or provide a means of identifying, residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

Other Information/Thoughts/Suggestions:

- Develop a method of tracking FOIA requests and responses, to assure that the time frames set forth in the Act are complied with and also to assure that all persons involved in the process will know which items have been released in the past, and which have not.
- This method should include means for determining:
 - Where exempt material has been eliminated from released documents.
 - Circumstances under which denials were made.
 - Appeals to denials, and the results of such appeals.
- Requestors who inspect documents on-site should:
 - Be provided a designated space.
 - Review documents in the presence of a staff member.
 - Not be allowed to remove documents from files, or from the premises unless those documents are copied specifically for the requestor by staff of the affected public body.

- If the requestor seeks a certified copy of a document, the designated official should place: "I certify that this is a true and exact copy." on the face of the document, and sign his or her name below the statement.
- Some departments (e.g., Corrections) have special additional authority concerning requests for information. If your agency falls within this category, refer to specific procedures for your agency.

SAMPLE LETTER 1

EXTENSION OF TIME IN WHICH TO RESPOND TO FOIA REQUEST

Date

Name/Address of Requestor

Dear XXX:

On (insert date) we received your (written/oral) request for information under the Freedom of Information Act, Act No. 442 of 1976, being sections 15.231 et seq. of the Michigan Compiled Laws. We have reviewed your request and determined that all relevant files cannot be located and searched within the 5 day statutory period.

OPTION 1: Consequently, we are extending the date of our response to (insert date which is not later than 15 business days after the date of the request).

OPTION 2: Pursuant to the agreements reached in our telephone conversation of (insert date) we are extending the date of our response to (insert date which conforms to the agreements reached).

(closing)

(signature and title of responding official)

SAMPLE LETTER 2

RESPONSE GRANTING FOIA REQUEST

Date

Name/Address of Requestor

Dear XXX:

On (insert date) we received your (written/oral) request for information under the Freedom of Information Act, Act No. 442 of 1976, being sections 15.231 et seq. of the Michigan Compiled Laws. We have reviewed all relevant files and have identified the following as being responsive to your request:

(List all records identified, including those with attachments or appendices.)

You may inspect these documents at our offices during normal business hours by calling (insert name of contact person and telephone number) to arrange an appointment. If you prefer, we can copy the documents and send them to you. The fees for this service are: (insert fees). We estimate that the cost of copying and sending these documents will be approximately (insert amount).

OPTION 1: Because the estimated fees exceed \$50.00, a deposit of 50% of the amount must be received prior to us making the copies. Please make your check or money order payable to the State of Michigan and send to (insert name and address of appropriate person).

Please contact (insert name and telephone number of contact person) to make arrangements for coming in to inspect the documents, or to have them copied and sent to you.

(closing)

(signature and title of responding official)

SAMPLE LETTER 3

DENIAL OF FOIA REQUEST

Date

Name/Address of Requestor

Dear XXX:

On (insert date) we received your (written/oral) request for information under the Freedom of Information Act, Act No. 442 of 1976, being sections 15.231 et seq. of the Michigan Compiled Laws. We have reviewed all relevant files and have determined that all of the following responsive, requested, records are exempt from disclosure:

(List each record; cite portion of the statute which supports the denial; provide a detailed, factual explanation of the reason for the denial; state whether it is unavailable because it was destroyed under the document destruction procedures or in some other fashion.)

Include the following language:

Finally, I certify that the following records do not exist under the name which you provided or another name reasonably known to us: (List all records which cannot be found under the requested name.)

Section 10 of the FOIA provides that a final decision denying a request may be appealed by bringing a circuit court action to compel disclosure. If a person asserting the right to inspect or receive a copy of a public record prevails in such an action, the court is to award to the individual reasonable attorneys fees, costs and disbursements. Further, if the court finds the denial to be arbitrary and capricious, the individual making the request will receive punitive damages in the amount of \$500.00.

(closing)

(signature and title of director or designee)

SAMPLE LETTER 4

GRANT FOIA REQUEST IN PART/DENY FOIA REQUEST IN PART

Date

Name/Address of Requestor

Dear XXX:

On (insert date) we received your (written/oral) request for information under the Freedom of Information Act, Act No. 442 of 1976, being sections 15.231 et seq. of the Michigan Compiled Laws. We have reviewed all relevant files and are providing the following records identified as being responsive to your request:

(List all records provided, including those with attachments or appendices)

You may inspect these documents at our offices during normal business hours by calling (insert name of contact person and telephone number) to arrange an appointment. If you prefer, we can copy the documents and send them to you. The fees for this service are: (insert fees). We estimate that the cost of copying and sending these documents will be approximately (insert amount).

In addition, we identified the following records which are exempt from disclosure either in whole or in part:

(List each record; state whether it is being denied entirely (and thus is not being sent) or being denied in part (and that those nonexempt portions are being sent); cite the portion of the statute which supports the denial; provide a detailed, factual explanation of the reason for the denial; state whether it is unavailable because it was destroyed under the document destruction procedures or in some other fashion.)

Include the following language:

Finally, I certify that the following records do not exist under the name which you provided or another name reasonably known to us: (list all records which cannot be found under the requested name).

Section 10 of the FOIA provides that a final decision denying a request may be appealed by bringing a circuit court action to compel disclosure. If a person asserting the right to inspect or receive a copy of a public record prevails in such an action, the court is to award to the individual reasonable attorneys fees, costs and disbursements. Further, if the court finds the denial to be arbitrary and capricious, the individual making the request will receive punitive damages in the amount of \$500.00.

(closing)

(signature and title of director or designee)

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Distribution Date: 1-6-97
Procedure 2410.01